

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 145/Lab./AIL/J/2013, dated 23rd October 2013)

NOTIFICATION

Whereas, the common award in I.D. No. 26/2012, 27/2012 and 28/2012, dated 26-6-2013 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Larsen and Toubro Limited, Puducherry and its workmen Thiruvalargal S. Pasupathi, S. Atralasun and V. Rajacanbady, over non-employment has been received;

Now, therefore in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/9/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order)

S. THAMMU GANAPATHY,

Under Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PUDUCHERRY

Present : Thiru T. MOHANDASS, M.A., M.L.,
Presiding Officer, Labour Court.

Wednesday, the 26th day of June 2013

I.D. No. 26/2012

S. Pasupathi .. Petitioner

I.D. No. 27/2012

S. Atralasun .. Petitioner

I.D. No. 28/2012

V. Rajacanabady .. Petitioner

Versus

The Management of Larsen and
Toubro Limited, ECC Division,
Rep. by its Managing Director. .. Respondent

These industrial disputes coming on 20-6-2013 before me for final hearing in the presence of Thiruvalargal P.R. Thiruneelakandan and A. Mithun Chakkaravarthy, Advocates for the petitioners, Thiruvalargal M. Vaikunth, Narayanan, R. Vikneshraj and R. Elamparudhi, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

COMMON AWARD

Since the petitioners are the employees of the respondent company and the respondent is the one and the same in all the industrial disputes and all the industrial disputes are interlinked with each other, the common award is passed.

2. The petitioners in their petition have stated as follows:

The petitioner in I.D. No. 26/2012 was appointed on 4-10-1993 as a casual, then on 8-7-1996 he was given appointment as trainee and then on 22-2-1999 he was confirmed as permanent employee. The petitioner in I.D. No. 27/2012 was appointed on 28-9-2000 as contract worker and then his service was confirmed as operator on 4-7-2001. The petitioner in I.D. No. 28/2012 was initially appointed as casual on 30-8-1994 and then he was given appointment order on 8-7-1996 as trainee and then his service was confirmed on 21-2-1999. Though the schedule of Industrial Employment Standing Order Act, 1946 does not provide any clause for transfer of workman, the respondent incorporated the transfer matter as a one of the service conditions in the letter of appointment.

The Industrial Employment Standing Order (Central Rule) does not apply to the respondent factory. Under these circumstances, the power of transfer of industrial employee/workmen working in private industrial establishment in Union territory of Puducherry shall not be transferred for any reason and the transfer of workman cannot be termed as incidental of service condition after the Industrial Employment Standing Order Act came into force.

Whenever the workers and trade union raised charter of demand for wage revision and other allowances at the crucial point of negotiation talk over the said demand, the respondent management used to give promotion selectively to the trade union office bearer and the worker who is having active participation in the trade union. The promotion was given with a view to create fear on the mind of workers to desist from union activity and to suppress the demand.

The respondent using the above said tactics of giving promotion to the workers at the crucial point of time of negotiation of wage demand, transferred the trade union office bearer and active trade union participant and the workers were terminated from service, by act of victimisation in the transferred place and they were prevented from redressing their grievance due to their alteration service condition in the transferred place. In the transferred place, the transferred worker were treated discriminately and they were not allowed to meet their family, which

created much mental pressure on the worker and thereby the worker was forced to leave the service voluntarily, if any worker manage to work, he was also terminated from service in the construction site once the project is completed.

Eventually 12(3) Settlement, dated 10-8-2009 arrived between the respondent and the Larsen and Toubro Pattali Thozhil Sangam before the Labour Officer Conciliation. In the said settlement in clause 10, the respondent agreed that there will be no promotion unless the workers reached the maximum basis slab of "IV Grade". By letter, dated 15-6-2011 the said settlement extended till reach the next settlement, as such the said settlement is in force as of now.

In the meantime the respondent submitted the draft standing, including the transfer clause before the Commissioner of Labour, who is certifying officer under the Industrial Employment Standing Order. The workers and Larsen and Toubro Pattali Thozhil Sangam objected the transfer clause as it is outside the schedule of Act and not in conformity with the Standing Order Act. Despite such objection, the certifying officer certified the Standing Order.

As against the said Certified Standing Order, the Larsen and Toubro Pattali Thozhil Sangam filed a Writ Petition No. 5457 of 2010 and since the Hon'ble High Court in its order expressed a view to avail appeal remedy, the Larsen and Toubro Pattali Thozhil Sangam filed appeal before the Labour Court, Puducherry under section 6 of the Industrial Employment Standing Order Act, which brings automatic stay of the operation of the said Certified Standing Order under section 7 of the Act.

On 12-7-2011 Larsen and Toubro Pattali Thozhil Sangam sent charter of demand for wage revision and other allowances. The Larsen and Toubro Pattali Thozhil Sangam raised a demand for bonus for contract workers, which was opposed by the respondent management stating that the trade union representing permanent employees has no business to raise a demand for contract workers. Despite such objection, the Larsen and Toubro Pattali Thozhil Sangam raised the dispute over the demand of bonus for contract workers before the Conciliation Officer, which annoyed the respondent management and they had refused to negotiate the charter of demand submitted by the Larsen and Toubro Pattali Thozhil Sangam.

Larsen and Toubro Pattali Thozhil Sangam submitted a demand for one time lump sum settlement as paid every year, but the same was

denied by the respondent management. Hence, the said union raised a dispute in I.D. No. 2466/2011/LO(C)/AIL claiming one time lump sum settlement. On 2-8-2011 and on 10-11-2011. The Larsen and Toubro Pattali Thozhil Sangam sent a letter to the respondent management to invite the trade union for negotiating the charter of demand. Then on 26-11-2011, the Larsen and Toubro Pattali Thozhil Sangam sent another letter stating that if they are not invited for negotiation talk, they will do protest by wearing black badge. On receipt of the said letter, the respondent management instead of inviting the trade union to negotiate the charter of demand, the respondent on 17-1-2012 announced that they are proposed to promote and transfer the office bearer and executive committee members of the Larsen and Toubro Pattali Thozhil Sangam.

The said proposal was strongly opposed by the trade union and as against the proposed promotion and transfer of workers on 18-1-2012, raised dispute in I.D. No. 127/2012/LO(C)/AIL before the Conciliation Officer. The Conciliation Officer issued notice either parties in the above said dispute. While pending the above said dispute, an ante dated promotion-*cum*-transfer order, dated 4-1-2012 was served to the petitioners, wherein the said petitioners were promoted as company staff (Technical/Commercial Supervisors) and posted at Rajpur, Kolkatta, Chennai.

On 16-2-2012 in the conciliation proceedings in I.D. No. 127/LO(C)/AIL 2012, the Conciliation Officer advised the respondent that they shall not effect any promotion-*cum*-transfer. But the respondent did not pay any heed to the advice of the Conciliation Officer. Hence, Larsen and Toubro Pattali Thozhil Sangam made a complaint, dated 13-2-2012 in I.D. No. 801/LO(C)/AIL/2012 against the respondent for unfair labour practice. While so on 13-2-2012 the petitioner workers forgo their promotion order and sent a letter, dated 13-2-2012 to the respondent management and to the Labour Officers.

In the conciliation meeting held on 16-2-2012 the Conciliation Officer advised the respondent management to withheld the promotion-*cum*-transfer of the workers as it is against the 12(3) Settlement and violation of section 33 of Industrial Disputes Act. Despite such advise order of the Labour Officer, the respondent did not withheld the promotion order and denied employment to the workers. Hence, this industrial dispute is filed by the petitioners for their reinstatement with other benefits.

3. The respondent in his counter has stated as follows :

The industrial dispute filed on 23-7-2012 itself has become infructuous for the reason that even before filing of the present industrial dispute, an Memorandum of Understanding under section 12(3) of the Industrial Disputes Act had been signed on 25-5-2012 between the respondent and the petitioner's union in the presence of the Labour Officer-Conciliation whereby the parties to the settlement had agreed to accept the transfer order, dated 4-1-2012 issued by the respondent management. It is also agreed in the said agreement that the management has agreed to accommodate all the workers transferred *vide* order dated 4-1-2012 in various locations in Tamil Nadu and Puducherry only. Accordingly, the petitioners were transferred and in pursuance to the transfer orders, all the employees were relieved with a direction to report at the new locations within a stipulated time. Instead of complying with the transfer orders and reporting at the transferred place, a few employees including the petitioners, chose to stay away even after all of them were relieved to enable them to report at the new locations. The petitioners did not chose to report at the new locations and hence the respondent had to resort to the concept of "no work no pay". Therefore, there was no question of any non-employment as alleged by the petitioners. Hence, they pray for dismissal of the industrial dispute.

4. In the reply statement, the petitioner has stated as follows :

The petitioners have resigned from Larsen and Toubro Pattali Thozhil Sangam on 5-5-2012 and their resignation was accepted and they were relieved on 6-5-2012. Then the petitioners raised the individual disputes on 8-5-2012 under section 2(A) of Industrial Disputes Act over their denial of employment. On 25-5-2012 the Larsen and Toubro Pattali Thozhil Sangam entered into 12 (3) Settlement in respect of four workmen, who had agreed the proposal given by the respondent management. On the date of settlement, the petitioners are neither the members of the said Larsen and Toubro Pattali Thozhil Sangam nor signed the settlement accepting the proposal of the respondent. Rule 58 of the Industrial Disputes Act the settlement signed between the Larsen and Toubro Pattali Thozhil Sangam and the respondent management will not bind the petitioners. Under the very same rule, the trade union have no right to sign any settlement in respect of the individual dispute filed under section 2(A) of the industrial dispute Act, (8) under the very same rule in respect of the individual dispute under section 2(A) of the Industrial Dispute Act the concerned workmen alone have right to sign the settlement and thus 12(3) settlement, dated 25-5-2012 will not bind the petitioners.

5. In I.D. No. 26/2012, on the side of the petitioner, the petitioner was examined as PW.1 and Ex.P1 to Ex.P20 were marked and on the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R3 were marked. In I.D. No. 27/2012, on the side of the petitioner, the petitioner was examined as PW.1 and Ex.P1 to Ex.P20 were marked and on the side of the respondent, RW.1 was examined and Ex.R1 to Ex.R3 were marked. In I.D. No. 28/2012, the petitioner was examined as PW1 and Ex.P1 to Ex.P20 were marked and on the side of the respondent, RW.1 was examined and Ex.R1 was marked and Ex.R2 and Ex.R3 were marked by consent.

6. *The point for consideration is:*

Whether these industrial disputes can be allowed?

7. *On this point :*

The contention of the petitioners is that they were Treasurers, active members of Larsen and Toubro Pattali Thozhil Sangam and the respondent used the promotion-*cum*-transfer the workers to the construction site to victimise the workers and the said Larsen and Toubro Pattali Thozhil Sangam opposed the promotion of the workers, eventually entered into the 12(3) settlement, dated 10-8-2009 wherein both the trade union and the respondent management agreed in clause 10 of the settlement that there will be no promotion, unless the workers reached the maximum scale of pay in their fourth grade.

8. In order to prove their respective claims, the petitioners in the respective industrial disputes were examined as PW.1. PW.1 has marked the copy of the 12(3) settlement entered into between Larsen and Toubro Pattali Thozhil Sangam and the respondent management on 10-8-2009 as Ex.P3. According to the petitioners, they have resigned from Larsen and Toubro Pattali Thozhil Sangam on 5-5-2012 and their resignation was accepted and they were relieved on 6-5-2012 and then they raised the individual disputes on 8-5-2012 under section 2(A) of Industrial Disputes Act over their denial of employment and on 25-5-2012 the Larsen and Toubro Pattali Thozhil Sangam entered into 12 (3) Settlement in respect of four workmen, who had agreed the proposal given by the respondent management and on the date of settlement, they were neither the members of the said Larsen and Toubro Pattali Thozhil Sangam nor signed the settlement accepting the proposal of the respondent and hence the settlement signed between the Larsen and Toubro Pattali Thozhil Sangam and the respondent management will not bind them. In order to prove his claim, the learned counsel for the petitioner has cited the following decisions:-

1981 (3) SCC 493:

Brooke Pond India Limited Vs. The Workmen:

“Industrial Disputes Act, 1947 sections 2a(p) and 18(1) settlement otherwise than in course of conciliation proceedings—memorandum of settlement signed by office bearer of union without being authorised either by the constitution of union or by the executive committee of the union or by the workmen enter into any agreement with the management, held—does not amount to a settlement” within the meaning of section 2(p)—hence such a settlement is not binding between the parties under section 18(1) – and can be got withdrawn by the union.”

1969 LAB IC 1450 (DEL):

Hindustan Housing Factory Limited Vs. Hindustan Housing Factory Employees Union the High Court:

“A reading of rule 58 clearly shows that it presupposes the existence of a settlement already arrived at between the employer and the workmen, and it only prescribed the form in which the Memorandum of Settlement should be and by whom it should be signed. It does not deal with the entering into or arriving at a settlement. Therefore, where a settlement is alleged to have been arrived between an employer and one or more office bearers of the union, and the authority of the office bearers who signed the Memorandum of Settlement has to be established as a fact and it is not enough if the employer merely points out and relies upon the fact that the Memorandum of Settlement was signed by one or more of the office bearers of the union.”

(1990) 1 LLJ 119:

Co-operative Store Limited Vs. Ved Prakash Bhambri:

HELD: Rule 58 of the Industrial Disputes (Central) Rules, 1957 and Form H are statutory provisions which have to be given full effect before the settlement could be considered valid. Eventhough the settlement has not been arrived at during the pendency of the conciliation proceedings, yet the settlement has to be in accordance with the statutory provisions before it can be held to be valid. Settlement between the individual workman and the management must be strictly in compliance with the rules. ‘Settlement’ has been clearly defined under section 2(p) of the Industrial Disputes Act and the same has to be in accordance with the statutory provisions. If there is no settlement as contemplated in the statute and the rules made thereunder, the same will not be binding on the parties under section 18(1) of the Industrial Disputes Act, 1947.”

9. *Per contra*, the contention of the learned counsel for the respondent is that pursuant to the transfer orders, all the employees were relieved with a direction to report at the new locations within a stipulated time and instead of complying with the transfer orders and reporting at the transferred place, a few employees including the petitioners chose to stay away and did not report at the transferred place. He further submitted that the union had approached the Labour Officer (Conciliation) to reopen I.D. No. 127/LOC/AIL/2012 and to reconcile over the dispute and the respondent also participated in the reopened conciliation and after several rounds of discussions, the respondent agreed to accommodate all the workers transferred *vide* order dated 4-1-2012 in various locations in Tamil Nadu and Puducherry only and accordingly under section 12(3) of the Industrial Disputes Act was reached and signed between the respondent management and the recognised union on 25-5-2012 and hence the said settlement will bind the petitioners also. In order to support his claim, he relied upon the following decisions:

(1998) 1 Supreme Court Cases 650 :

P. Virudhachalam and others Vs. Management of Lotus Mills and another:

“The appellant’s contention that for attracting the first proviso to section 25-C(1), there should be independent agreement between the workman and the employer to that effect agreeing not to demand lay-off compensation beyond 45 days of the starting of the lay-off period cannot be accepted. An agreement restricting the claim of lay-off compensation beyond the available period of 45 days can be said to be arrived at between the workmen on the one hand the employer on the other as there is such an agreement embedded in a binding settlement which has a legal effect of binding all the workmen in the institution as per section 18(3) of the Act. Such binding effect of the embedded agreement in the written settlement arrived at during the conciliation proceedings would get telescoped into the first proviso to section 25-C(1) and bind all workmen eventhough individually they might not have signed the agreement with the management or their union might not have signed such agreement with the management on behalf of its member-workmen.”

(2002) 3 Supreme Court cases 411:

ITC Limited, Workers Welfare Association and another Vs. Management of ITC Limited and another:

“The settlement arrived at in the instant case was in the course of conciliation proceedings and therefore it carries a presumption that it is just and

fair. It becomes binding on all the parties to the dispute as well as the other workmen in the establishment to which the dispute relates and all other persons who may be subsequently employed in that establishment. An individual employee cannot seek to wriggle out of the settlement merely because it does not suit him.”.

10. On the side of the petitioners, the resignation letter of the petitioner from the trade union, dated 5-5-2012 was marked as Ex.P18, the letter, dated 6-5-2012 sent by the trade union to the petitioners accepting his resignation as Ex.P19 and the industrial dispute raised by the petitioner before the Conciliation Officer as Ex.P20. A perusal of Ex.P18 to Ex.P20 reveals that the petitioners were the members in Larsen and Toubro Pattali Thozhil Sangam and on 5-5-2012 they resigned from the said sangam and their resignation was accepted by them and on 8-5-2012 they raised individual dispute over the denial of employment.

11. On the side of the respondent, copy of memorandum of settlement under section 12(3) of Industrial Disputes Act was marked as Ex.R1. A perusal of Ex.R1 reveals that the said settlement was arrived on 25-5-2012 between the trade union and the respondent management. As the petitioners were resigned from the trade union on 5-5-2012 under Ex.P18 and the same was accepted by the trade union on 6-5-2012 under Ex.P19, the petitioners were not members of the said union on 25-5-2012. Hence, Ex.R1 signed between the respondent and the Larsen and Toubro Pattali Thozhil Sangam will not bind the petitioners.

12. Further the settlement must be signed in a prescribed manner and the manner prescribed for signing settlement under rule 58 of Industrial Disputes Central Rules provides which is as follows:-

Rule 58 of Memorandum of Settlement:

(1) A settlement arrived at in the course of conciliation proceedings or otherwise, shall be in Form 'H'.

(2) The settlement shall be signed by-

(a)

(b) In the case of workmen, by any officer of a trade union of the workmen or by five representative of the workmen duly authorised in this behalf at a meeting of workmen held for the purpose.

(c) In the case of the workmen, in an industrial dispute under section 2A of the Act, by the workman concerned.

13. From the above, it can be seen that to sign any settlement in case of workman, the said workman must be a member of trade union and the office bearer or five

representative of the workman duly authorised in this behalf at a meeting of the workman held for the purpose. In the case on hand, as already stated, the petitioners were not members of Larsen and Toubro Pattali Thozhil Sangam at the time of signing 12(3) Settlement under Ex.R1 and also after their resignation from the said trade union, they were not an authorised office bearers or any representative of the trade union to sign settlement under Ex.R1. Hence, the settlement under Ex.R1 signed between the respondent and the said Larsen and Toubro Thozhil Sangam and it will not bind the petitioners and it cannot be termed as settlement in respect of the petitioners' individual dispute over their denial of employment.

14. Further the petitioners filed a writ petition sought for directions against the respondent, Conciliation Officer, Larsen and Toubro Pattali Thozhil Sangam not to sign any settlement so as to withdraw their individual dispute and in the said writ petition, the L & T Pattali Thozhil Sangam filed a detailed counter stating that they had signed settlement only for the workers, who had accepted the proposal given by the respondent management and it will not bind either the rest of union members or the petitioners. Therefore, the settlement under Ex.R1 will not bind the petitioners and there is no settlement arrived between the petitioners and the respondent under rule 58 of Industrial Disputes Central Rules.

15. The learned counsel for the petitioners further submitted that the promotion-*cum*-transfer order, dated 4-1-2012 under Ex.P12, the respondent has not assigned any reason for the transfer of the workers to other State and as per the petitioner's letter of appointment under Ex.P1, the petitioners can be transferred only in case of necessity, but no necessity has been shown in the promotion-*cum*-transfer order under Ex.P10 and hence the petitioners were given unmerited promotion and posted them to north India to victimise them for their union activities and therefore the contention of the respondent that the petitioners were transferred to other State as per the management policy decision, which is nothing but an unfair labour practice stated in Schedule V Part 1 Clause 7 of the Industrial Disputes Act.

16. The contention of the learned counsel for the respondent has submitted that it is needless to submit that the transfer is an incidence of service and the lawful orders of transfer to meet exigencies of business and administrative needs cannot be interfered with unless it is *mala fide* and the management is entitled to effect transfer of any employee, if the same is an administrative exigency and the terms and conditions of employment so provide. In order to support his claim, he relied upon the following decisions:-

1974 (2) LLJ 298 Madras:

"Constitution of India Art. 226 - Tamil Nadu Shops and Establishments Act, 1947, S. 41 - Employee dismissed from service for disobeying order of transfer - On appeal by the employee, the Additional Commissioner for Workmen's Compensation holding that the employee was not liable to be transferred and setting aside the order of dismissal - The employee having failed in the writ petitioner preferring the instant writ appeals - Power of management to transfer employee though inherent, held, the employee having been appointed to work at the place where he was originally and specifically appointed to work by the management the finding of the Additional Commissioner for Workmen's Compensation on facts to that effect could not be interfered with."

2001 4 LLN 440 Raj (D/B):

"The courts have held that transfer of an employee is part of conditions of service and the employees are bound to obey the order of transfer and work in the place where they have been transferred and posted. Transferability from one establishment to another is an incident of service and that the utilisation and distribution of its manpower amongst various units and places. Courts and Tribunals cannot also properly assess or adjudicate effectively the reasons given for transfer of employees. The decision of the employers in such cases is conclusive and that except in the rarest of rare cases, court should not interfere with transfer orders."

1963 (2) LLJ 354 SC :

"Order of transfer of a clerk made by the bank should ordinarily be presumed to be proper unless it is proved that it was made *mala fide* or by way of victimisation, unfair labour practice or some ulterior motive, not connected with the business interests of the bank - Order of transfer in the instant case, held, proper and justified where it was held by the Labour Court that the action of the management was *bona fide*."

1966 1 LLJ 440 SC:

"There is no doubt that the banks are entitled to decide on a consideration of the necessities of banking business whether the transfer of an employee should be made to a particular branch. There is also no doubt that the management of the bank is in the best position to judge how to distribute its employees between the different branches. We are, therefore, of opinion that Industrial Tribunals should be very careful before they interfere with the

orders made by the banks in discharge of their managerial functions. It is true that if an order of transfer is made *mala fide* or for some ulterior purpose, like punishing an employee for his trade union activities, the Industrial Tribunals should interfere and set aside such an order of transfer, because the *mala fide* exercise of power is not considered to be the legal exercise of the power given by law. But the finding of *mala fide* should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds as the Industrial Tribunal has done in the present case."

17. From the arguments of learned counsel for the petitioner and the respondent, it can be seen that the trade union filed writ petition Nos. 3314 and 3315 of 2012 before the Hon'ble High Court, Madras to declare that the transfer order issued by the respondent, dated 4-1-2012 transferring the petitioners from Puducherry factory to other State is illegal and without jurisdiction and the union had also filed a Standing Order Appeal before the Appellate Authority under the Industrial Employment (Standing Orders) Act, challenging the certificate granted by the competent authority to the standing orders submitted by the respondent especially with regard to inclusion of provisions related to the transfer of employees and the said two writ petitions are still pending before the Hon'ble High Court, Madras.

18. According to the petitioners, the Larsen and Toubro Pattali Thozhil Sangam and the respondent management mutually agreed in clear term in clause 10 of the 12(3) Settlement, dated 10-8-2009 for not to give any promotion to the workers before completion of IV grade and the respondent management knowing very well about the said agreed terms of clause 10 of 12(3) settlement, deliberately with an ulterior motive issued ante dated promotion order, dated 4-1-2012 to the some workers including them and since the proposed promotion-cum-transfer announced by the respondent management was contrary to the agreed terms of clause 10 of 12 (3) settlement, dated 10-8-2009 and the Larsen and Toubro Pattali Thozhil Sangam and the individual workers including them opposed and objected the proposed promotion-cum-transfer to other State and as against the proposed transfer, the Larsen and Toubro Patalli Thozhil Sangam raised the industrial dispute in I.D. No. 127/2012/LOC/AIL before the Labour Officer, Conciliation, Puducherry and while pending the said dispute, without getting approval of the Labour Officer (Conciliation), the respondent by his order, dated 4-1-2012, served on the petitioners, promoted them as Company's Technical/Commercial Supervisor and posted them in the construction site at Kolkatta, West Bengal State. The petitioners further contended that the as

against the said promotion order, the Larsen and Toubro Pattali Thozhil Sangam lodged a complaint before the Labour Officer (Conciliation) under section 33-A of the Industrial Disputes Act and also lodged a complaint under section 25 T of the Industrial Disputes Act for unfair labour practice and in the said industrial dispute, negotiation talk was held before the Conciliation Officer and also at level of Deputy Commissioner of Labour, in which the Conciliation Officer by advice order, dated 9-2-2012 advised the respondent to allow the workers to report to the work and they shall not be deprived any right and no adverse decision should be taken against them and thereafter in the conciliation meeting held before the Deputy Commissioner of Labour on 13-2-2012, he, considering the 12 (3) settlement and forego letter of the individual worker forging his promotion, he has passed the detailed advise order stating the promotion-*cum*-transfer is against the terms of 12(3) settlement and he advised the management not to give effect to the promotion-*cum*-transfer order, unless a mutually acceptable solution is arrived and despite the advice of the Labour Officer (Conciliation) and the Deputy Commissioner of Labour in the above said pending dispute, the respondent denied the employment to the petitioners even after receipt of his letter forgoing their promotion.

19. The respondent has not produced any records before this court to justify the promotion. Even in the promotion under Ex.P10, the respondent has not assigned any reason for promotion-*cum*-transfer of the petitioners. As per clause 10 of 12(3) settlement, dated 10-8-2009, there will be no promotion, unless the workers reached the maximum scale of pay in their fourth grade. But RW.1 in his cross-examination has admitted that the petitioners are in third grade. Hence, the petitioners have not even reached the fourth grade, the respondent without assigning any reasons, promoted the petitioners and posted them in North India, which is *mala fide* one.

20. The learned counsel for the respondent has submitted that under section 2A of the Industrial Disputes Act, only disputes related to discharge, dismissal or retrenchment can be raised by the individual workman and in the case on hand, the petitioners have not been dismissed, discharged or retrenched and consequently there cannot be any ground for raising the present dispute over non-employment and the petitioners were promoted on the basis of their qualification and seniority and transferred in terms of the company policy; however the petitioners even after their relief, did not choose to report at the transferred place and therefore there is no question of denial of employment as alleged by them.

21. The learned counsel for the petitioners has submitted that though they have submitted letter to forgo their promotion and requested the respondent to continue employ them as workmen in the Puducherry factory, the respondent denied employment to the petitioners and they were not allotted any work and their names were removed from the integrated attendance, access system and thereby they prevented from entering into the factory from 18-2-2012 and they after forgone their promotion, sent letter, requesting the respondent to provide employment in Puducherry factory, despite their request they were denied employment.

22. As per the own averments of the respondent, in pursuant to the transfer orders, all the employees were relieved with a direction to report at the new locations within a stipulated time and instead of complying with the transfer orders and reporting at the transferred place, the petitioners chose to stay away and did not report at the transferred place. As already stated, the petitioners have been transferred to other State violating the settlement under section 12(3) of Industrial Disputes Act and consequent to the transfer order issued to the petitioners, they were relieved from duty, which would show that in order to deny the employment only, the respondent in a hasty manner without assigning any reasons issued the transfer orders to the petitioners. In the above circumstances, the petitioners have rightly filed the above industrial disputes before this court under section 2(A) of Industrial Disputes Act and consequently, the petitioners are entitled for reinstatement with continuity of service.

23. As far as the back wages are concerned, the learned counsel for the petitioner has submitted that the petitioners after foregoing their promotion, expressed their desire to continue as operator in the respondent factory but the respondent denied employment to the petitioners and when the petitioners declined to accept the promotion, it does not amount to misconduct or abandonment of service. In order to prove his claim, he relied upon the following decision:-

2005 (3) MLJ 569:

Ambassador Pallava, rep. by its Executive Assistant Manager Mr. Vasant Sampath, Chennai Vs. The Presiding Officer, II Additional Labour Court, City Civil Court Buildings and another:

“We do not agree that the second respondent had abandoned his service. The finding of fact of the Labour Court is that he was always willing to serve as office boy and he never refused to perform his duties as such. He only did not want to become a security guard. In our opinion, this cannot be called as misconduct by any stretch of imagination.

The second respondent was prevented by the management from discharging his duties as office boy since November 1986, merely on the ground that he refused to accept promotion. In our opinion, the action of the management was wholly arbitrary and illegal. There is nothing to show that the second respondent was unwilling to work as office boy. He was only unwilling to work as security guard. By foregoing his promotion, we fail to understand what wrong he had committed.”.

In the above case, the second respondent/employee, who was the office boy, has foregone his promotion as security guard and even after foregoing his promotion, he was prevented by the management from discharging his duties as office boy and hence the Hon'ble High Court has held that this cannot be called as misconduct by any stretch of imagination and confirmed the order of trial court that the employees are entitled for reinstatement with full back wages and continuity of service. In the case on hand, the promotion, which was issued to the petitioners, has been foregone by them and even after foregoing their promotion, they were denied employment to work as operator. Hence, the act of the respondent was wholly arbitrary, unreasonable, illegal and amounted to victimisation of the petitioners. Hence, the respondent is hereby directed to reinstate the petitioners as operators in Puducherry factory with 50% of back wages and continuity of service. In case if the respondent feels that the transfer with promotion is an incidence of service to meet exigencies of business and administrative needs, the respondent is hereby directed to accommodate the petitioners in various locations in Tamil Nadu and Puducherry, as admitted by the learned counsel for the respondent. Accordingly, this point is answered.

24. In the result the industrial dispute is partly allowed with costs and the respondent is directed to reinstate the petitioner into service with 50% back wages and continuity of service and other attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 26th day of June 2013.

T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.

I.D. No. 26/2012

List of petitioner's witness :

PW.1 — 24-1-2013 — S. Pasupathi

List of petitioner's exhibits :

Ex.P1 — Appointment order of the petitioner as Trainee, dated 8-7-1996.

Ex.P2 — Copy of the confirmation order of the petitioner, dated 28-1-1999.

Ex.P3 — Settlement under section 12(3) of Industrial Disputes Act, dated 10-8-2009.

Ex.P4 — Settlement under section 12(3) of Industrial Disputes Act, dated 15-6-2011.

Ex.P5 — Letter, dated 12-7-2011 sent by the petitioner's union to the respondent.

Ex.P6 — Reminder letter, dated 2-8-2011 sent by the union to the respondent.

Ex.P7 — Reminder letter, dated 10-11-2011 sent by the union to the respondent.

Ex.P8 — Letter, dated 26-12-2011 sent by the trade union to the respondent.

Ex.P9 — Industrial dispute raised by the trade union in Industrial Dispute No. 127/2012/LO(C)/AIL, dated 18-1-2012.

Ex.P10 — Transfer order, dated 4-1-2012 issued to the petitioner by the respondent.

Ex.P11 — Advise order issued by the Deputy Labour Commissioner, dated 13-2-2012.

Ex.P12 — Letter, dated 13-2-2012 sent by the to petitioner foregoing his promotion.

Ex.P16

Ex.P17 — Advise order sent by the Conciliation Officer, dated 16-2-2012.

Ex.P18 — Resignation letter sent by the petitioner, dated 5-5-2012 resigning from trade union.

Ex.P19 — Letter, dated 6-5-2012 sent by the trade union, accepting the resignation sent by the petitioner.

Ex.P20 — Industrial dispute raised by the petitioner before the Conciliation Officer, dated 8-5-2012.

List of respondent's witness :

RW.1 — 5-4-2013 — K. Shanmugam

List of respondent's exhibits :

Ex.R1 — Copy of the Memorandum of Settlement under section 12(3) of Industrial Disputes Act.

Ex.R2 — Letter, dated 15-5-2012 sent by the petitioner to the respondent.

Ex.R3 — Postal cover

I.D. No. 27/2012

List of petitioner's witness :

PW.1 — 24-1-2013 - S. Atralarasu

List of petitioner's exhibits :

Ex.P1 — Probation order of the petitioner, dated 28-9-2000.

- Ex.P2 — Copy of the confirmation order of the petitioner, dated 4-7-2001.
- Ex.P3 — Settlement under section 12(3) of Industrial Disputes Act, dated 10-8-2009.
- Ex.P4 — Settlement under section 12(3) of Industrial Disputes Act, dated 15-6-2011.
- Ex.P5 — Letter, dated 12-7-2011 sent by the petitioner's union to the respondent.
- Ex.P6 — Reminder letter, dated 2-8-2011 sent by the union to the respondent.
- Ex.P7 — Reminder letter, dated 10-11-2011 sent by the union to the respondent.
- Ex.P8 — Letter, dated 26-12-2011 sent by the trade union to the respondent.
- Ex.P9 — Industrial dispute raised by the trade union in I.D. No. 127/2012/LO(C)/AIL, dated 18-1-2012.
- Ex.P10 — Transfer order, dated 4-1-2012 issued to the petitioner by the respondent.
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- Ex.P20 — Industrial dispute raised by the petitioner before the Conciliation Officer, dated 8-5-2012.

List of respondent's witness :

- RW.1 — 5-4-2013 - K. Shanmugam

List of respondent's exhibits:-

- Ex.R1 — Copy of the Memorandum of Settlement under section 12(3) of Industrial Disputes Act.
- Ex.R2 — Letter, dated 15-5-2012 sent by the petitioner to the respondent.
- Ex.R3 — Postal cover.

I.D. No. 28/2012:

List of petitioner's witness :

- PW.1 — 24-1-2013-V. Rajacanabady

List of petitioner's exhibits :

- Ex.P1 — Appointment order of the petitioner as Trainee, dated 8-7-1996.
- Ex.P2 — Copy of the confirmation order of the petitioner, dated 28-1-1999.
- Ex.P3 — Settlement under section 12(3) of Industrial Disputes Act, dated 10-8-2009.
- Ex.P4 — Settlement under section 12(3) of Industrial Disputes Act, dated 15-6-2011.
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List of respondent's witness :

- RW.1 — 5-4-2013 - K. Shanmugam

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T. MOHANDASS,
Presiding Officer,
Labour Court, Puducherry.